



3. On April 14, 2014, the agency sent the Petitioner a notice indicating that effective May 1, 2014, her health care benefits would be ending and that her FoodShare benefits would be reduced from \$104.00 per month to \$76.00 per month. (Exhibit 3, pg. 18)
4. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on April 18, 2014. (Exhibit 1)
5. In March 2014, the Petitioner began receiving Unemployment Insurance Benefits (UIB) in the amount of \$158.00 per week. Thus, based upon that information Petitioner's monthly UIB income works out to be:  

$$\$158 \times 4 \text{ weeks in a month} = \$632$$
(Exhibit 3, pg. 14)
6. In April 2014, the Petitioner received three weekly UIB checks, in the amounts of \$87.00, \$146.00 and \$146.00. Thus, based upon this information Petitioner's monthly UIB works out to be:  

$$\$87 + \$146 + \$146 = \$379$$

$$\$379 \div 3 = \$126.33$$

$$\$126.33 \times 4 \text{ weeks in a month} = \$505.32$$
(Exhibit 2, pg. 4)
7. In March 2014, the Petitioner received two bi-weekly paychecks from J Reckner Associates, the first reflecting gross income of \$259.60 and the second reflecting gross income of \$118.00. The Petitioner's monthly earned income works out be as follows:  

$$\$118 + \$259.60 = \$377.60$$
(Exhibit 3, pg. 13; Exhibit 2, pg. 6)
8. In April 2014, the Petitioner received two bi-weekly paychecks, each reflecting gross income in the amount of \$47.20. Based upon this information, Petitioner's average bi-weekly income works out to be:  

$$\$47.20 \times 2 = \$94.40$$
(Exhibit 2, pg. 6)
9. Petitioner's assistance group size is one. (Exhibit 3, pgs. 15-17)

### **DISCUSSION**

BadgerCare Plus is a Wisconsin variant of the MA program, for non-elderly, non-disabled Wisconsin residents. The program's nonfinancial eligibility standards were broadened effective April 1, 2014, to include adults who do not have minor children in their home. Wis. Stat. § 49.45(23); 2013 Wisconsin Act 116, § 29; *BadgerCare Plus Eligibility Handbook (BEH)*, § 2.1, which can be viewed on-line at:

<http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>

An applicant for BadgerCare Plus cannot have adjusted gross income exceeding 100% of the federal poverty level (FPL). Wis. Stat. § 49.45(23)(a); *BEH*, § 16.1. 100% FPL for a household of one is \$972.50.

Because income is budgeted prospectively, when the agency estimated the Petitioner's May income in early to mid-April 2014, the agency used the earned income the Petitioner received in March 2014. The agency's earned income determination was based upon paystubs the Petitioner provided. (See Exhibit 3) That was the best information that the agency had available to it at the time. Thus, the agency correctly calculated Petitioner's earned income as \$377.60. (See finding of fact #7 above)

It should be noted that for BadgerCare+ purposes, only actual gross monthly income is used. Estimated amounts using the 4.3 weekly pay period or 2.15 bi-weekly pay period multipliers are NOT used. *Process Help §16.4.1*; see also *Ops Memo 01-01*.

Although the agency initially relied upon the state data exchange to verify the Petitioner's UIB, Petitioner did timely report a decrease in her UIB on April 17, 2014. (See Case Comments, Exhibit 3, pg. 3) It appears that when the agency rechecked the data exchange on April 18, 2014, it misinterpreted the information and thought it reflected two payments for week 15/14 in the amount of \$87 and \$71. (Id.) However, the \$71 was an offset, most likely a repayment of an overpayment.

Per *BEH §16.2 paragraph 21*, repayments withheld from a public assistance check due to a prior overpayment should not be counted as income because the member/applicant was not entitled to the money. As such, the agency should have disregarded the \$71 and re-ran eligibility.

Petitioner's prospectively budgeted income for May 2014, should have worked out to be as follows (See findings of fact #s 6 and 7 above):

\$505.32	UIB
+\$377.60	earned income
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\$882.92	

Petitioner's monthly income of \$882.92 is below the 100% FPL/\$972.50 income limit. As such, the Petitioner was financially eligible for the BadgerCare+ program.

### **CONCLUSIONS OF LAW**

The agency incorrectly terminated the Petitioner's BadgerCare+ benefits effective May 1, 2014.

**THEREFORE, it is**

**ORDERED**

That the agency reinstate the Petitioner's BadgerCare+ benefits, effective May 1, 2014, if she is otherwise qualified. The agency shall take all administrative steps necessary to complete this task within 10 days of this decision.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 26th day of June, 2014

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on June 26, 2014.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability